

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CHANDRAMA MISHRA,

Appellant,

v.

UNIVERSITY OF WASHINGTON,

Respondent.

) Case No. SUSP-99-0040

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) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

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I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and LEANA D. LAMB, Member. The hearing was held at the University of Washington, South Campus Center, Seattle, Washington, on February 2, 2001. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Chandrama Mishra was present and was represented by Thomas Leahy, Staff Attorney for the Service Employees International Union. Jeffrey W. Davis, Assistant Attorney General, represented Respondent University of Washington.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a one week suspension for inappropriate and abusive behavior and/or unprofessional conduct.

1.4 **Citations Discussed.** WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

II. MOTION

2.1 At the outset of the hearing, Respondent made a Motion in Limine asking the Board to enter an order limiting the testimony during the hearing to issues relevant to the events for which Appellant was disciplined and not allegations raised by Appellant against another employee. Respondent asserted that during pre-hearing matters, Appellant made it clear that during the course of his hearing, he would be presenting documents and testimony that have nothing to do with Appellant's activities on July 15, 1999. Respondent argued that the sole purpose of this evidence is to establish that another employee, Director of the Environmental Services, Rob Carroll, raised his voice and yelled at employees. Respondent argued that Appellant has a long history of attacking Mr. Carroll, based on either his race (white) or his public acknowledgement of being a gay male. Respondent asked that Appellant not be allowed to put another employee "on trial" or hold a hearing within a hearing.

2.2 Appellant argued that if Respondent's motion is granted, he will be precluded from arguing that he was treated differently than other employees and/or discriminated. Appellant asserted that the only way to establish that he was treated differently and/or discriminated against is by comparing him to other employees. Appellant argued that he needs to make a comparison between how Respondent treated Mr. Carroll for an incident that occurred in the fall of 2000, and what discipline, if any, Mr. Carroll was given by Respondent. Appellant asserted that the incident he wishes to elicit testimony about involves Mr. Carroll's interactions with employees at Harborview Medical Center. Appellant denied that he has a record of attacking Mr. Carroll. Appellant asserted that Respondent's mischaracterization of his intentions for the hearing is unfortunate and misleading and he asserted that he has no bias against whites or homosexuals. Appellant asked that Respondent's Motion in Limine be denied and that he be given the opportunity to question Rob Carroll and other witnesses related to the incident in the fall of 2000.

2.3 The Board granted Respondent's Motion in Limine ruling the testimony of Mr. Carroll and other witnesses called by Appellant would be limited to their knowledge regarding the July 15, 1999, incident for which Appellant was disciplined. The Board reminded the parties that the purpose of the Personnel Appeals Board is to provide a system of adjudication of appeals for eligible state employees and that adjudicating issues of alleged discrimination are not within the Board's jurisdiction.

III. FINDINGS OF FACT

3.1 Appellant Chandrama Mishra is a Safety Professional II (Safety Officer) and permanent employee for Respondent University of Washington at Harborview Medical Center. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on December 3, 1999.

3.2 By letter dated November 3, 1999, Tomi S. Hadfield, Chief Operating Officer at Harborview Medical Center, informed Appellant of his one-week suspension effective November 8, 1999. Ms. Hadfield charged Appellant with inappropriate and abusive behavior and/or unprofessional conduct.

3.3 Appellant began his employment with the University of Washington in May 1987. As a Safety Professional II, Appellant is responsible for developing and administering programs such as fire prevention and control, internal and external disaster procedures, ensuring hospital compliance with safety codes, developing and conducting education safety programs and acting as the liaison between the hospital and state and federal agencies. Appellant's personnel file does not contain any prior corrective or disciplinary actions.

1 3.4 The Safety Department and the Security Department had an arrangement that Vicki Tinker,
2 a secretary in the Security Department, would provide typing services to Appellant in addition to
3 her work for the Security Department. A portion of Ms. Tinker's salary was paid by the Safety
4 Department's budget. The secretarial support arrangement, however, created considerable
5 confusion and conflict, and Appellant found it difficult to get his typing jobs completed by Ms.
6 Tinker.

7
8 3.5 Appellant reported Ms. Tinker's refusal to perform work for him to Steve Orcutt, Associate
9 Administrator for Clinical Support Services. Mr. Orcutt, who is Appellant's supervisor, addressed
10 the clerical support services issue with Appellant and staff from the Security Department. A final
11 secretarial support agreement, confirmed by memorandum on January 16, 1999, called for Ms.
12 Tinker to perform clerical support services for Appellant on Tuesday-Thursday. Any work
13 Appellant needed performed on these days was to take priority over other work Ms. Tinker was
14 performing.

15
16 3.6 On Thursday, July 15, 1999, Appellant needed a typing job completed. Appellant entered
17 Ms. Tinker's office, which she shared with two other employees, Sheila Canady, and Dary
18 Hawkins, Campus Security Sergeant. When Appellant entered the office, only Ms. Tinker and Ms.
19 Canady were present. Appellant had not previously met Ms. Canady, who was a temporary
20 employee, and he proceeded toward Ms. Tinker's desk. When Ms. Canady asked if she could be of
21 assistance, Appellant responded no, that he was waiting for Ms. Tinker. Once Ms. Tinker
22 completed her call, Appellant told her that he wanted her to type a job for him. Ms. Tinker
23 responded that she was busy and could not do the work immediately.

24
25 3.7 There is conflicting testimony over what occurred next. Although Ms. Tinker was not
26 available to testify, her written statement of July 19, 1999, indicates that Appellant started yelling

1 that she needed to get his work done and that he took several steps towards her while continuing to
2 yell.

3
4 3.8 Ms. Canady testified that after Appellant indicated that he needed to speak to Ms. Tinker,
5 she returned to her work and was facing away from Appellant. Ms. Canady testified that she heard
6 “loud yelling.” Ms. Canady perceived Appellant’s voice to be angry.

7
8 3.9 Mr. Hawkins, who was conducting a meeting in the office next door, testified that he heard
9 loud voices coming from his office. Mr. Hawkins proceeded to check into the situation. He
10 testified that when he entered the office, he saw Appellant standing in front of Ms. Tinker
11 “shouting” at her and telling her that he needed his work done.

12
13 3.10 After Mr. Hawkins entered the office, Appellant agreed to leave the paperwork with Ms.
14 Tinker, who asked Appellant to call later that afternoon before returning to pick up the work.
15 Several hours later, Appellant called Ms. Tinker to check on the status of the work. Ms. Tinker
16 informed him that she had not completed the work. Appellant again admonished Ms. Tinker about
17 her failure to comply with the agreement to complete his work as required. Ms. Tinker told
18 Appellant to stop yelling at her and put Appellant on hold. Mr. Hawkins, who was in the office and
19 overheard Ms. Tinker’s side of the conversation, picked up the line. Mr. Hawkins informed
20 Appellant that Ms. Tinker was busy working on another important matter, that he should be patient,
21 and he asked Appellant why he couldn’t type the document himself. Appellant responded that Ms.
22 Tinker was supposed to be working for him that day and that he wanted her to do the typing. Mr.
23 Hawkins testified that Appellant’s tone of voice was angry. Mr. Hawkins also asserted that in the
24 past, Appellant had behaved in a similar manner.

1 3.11 Appellant admits that he became frustrated when Ms. Tinker told him that she was too busy
2 to perform his typing. He testified that he told Ms. Tinker, “this is my day, I insist that you do this
3 for me,” referring to their work agreement. Appellant denies that he yelled at Ms. Tinker, but
4 admits that he has a loud, strong voice and a tendency to wave his arms animatedly when he is
5 trying to make a point.

6
7 3.12 After observing Appellant’s demeanor during his testimony before us, we note that
8 Appellant’s voice is strong and forceful and that he had a tendency to raise his voice gradually as he
9 described his interactions that day with Ms. Tinker. We find that Appellant became excited, raised
10 his voice and waved his arms excitedly during the interaction on July 15, 1999. However, we find
11 that Appellant was not behaving in a violent or abusive manner during the exchange and did not
12 pose a threat to Ms. Tinker and Ms. Canady.

13
14 3.13 By making this finding, we are not discounting Ms. Canady’s testimony. Ms. Canady
15 credibly described her discomfort, concern and fear as she observed the interaction between
16 Appellant and Ms. Tinker. Ms. Canady’s supervisor, Shayna Rohwer, testified that when Ms.
17 Canady initially reported the incident, she stated that she had been exposed to similar types of
18 behavior in the past and did not want to be exposed to it at work. Based on her past experience, Ms.
19 Canady’s perception that Appellant’s behavior could escalate into violence is understandable in
20 light of Appellant’s demeanor and stern and disapproving tone toward Ms. Tinker. Furthermore, in
21 weighing Mr. Hawkin’s testimony, we note that he was clearly displeased with the work
22 arrangement. We also find that his perception and retelling of the events was most likely influenced
23 by his displeasure over the “unfair” work agreement and Appellant’s insistence that Ms. Tinker
24 perform her duties according to that agreement. Nonetheless, Respondent has established that
25 Appellant’s reaction to Ms. Tinker’s failure to perform her duties was unprofessional and
26 inappropriate.

IV. ARGUMENTS OF THE PARTIES

4.1 Respondent argues that Appellant angrily demanded that Ms. Tinker perform a typing job and started yelling at Ms. Tinker when she indicated that she was busy and could not perform the typing job immediately. Respondent argues that Appellant yelled in an extremely loud and angry manner at Ms. Tinker and that he cornered her in the back of the office as he advanced towards her. Respondent argues that when Appellant later called to check on the status of the job, he began to yell at Ms. Tinker again. Respondent argues that both Ms. Tinker and Ms. Canady were shaken by Appellant's aggression. Respondent contends that there was no need for Appellant's behavior, regardless of his frustration over the typing job. Respondent argues that a one-week suspension is minimal considering Appellant's behavior toward Ms. Tinker and Ms. Canady.

4.2 Appellant argues that the evidence does not support that he was violent during the interaction. Appellant argues that this is a case of misperceptions and he denies that he acted in an inappropriate or aggressive manner. Appellant admits that he became frustrated during the incident, but asserts that his reaction did not reach the level of rage that Respondents alleges. Appellant argues that Respondent failed to implement a plan of progressive discipline and asserts that the discipline imposed was punitive.

V. CONCLUSIONS OF LAW

5.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

5.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the

1 sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-
2 240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

3
4 5.3 Respondent has proved that Appellant's behavior was inappropriate and unprofessional. As
5 a Safety Professional, Appellant has a high level of responsibility and duty to treat others with
6 respect. However, Respondent has not established that Appellant's behavior was "abusive,
7 threatening and potentially violent."

8
9 5.4 In determining whether a sanction imposed is appropriate, consideration must be given to
10 the facts and circumstances, including the seriousness and circumstances of the offenses. The
11 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
12 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
13 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

14
15 5.5 In determining whether the sanction imposed here is appropriate, we have considered the
16 facts and circumstances presented. The Board takes seriously Respondent's concerns of potential
17 acts of violence in the workplace. However, no conclusive evidence was presented to support the
18 contention that Appellant's conduct was violent or threatening. Furthermore, no one in Appellant's
19 chain of command testified that such concerns were addressed with Appellant in the past.
20 Appellant's reaction to Ms. Tinker's failure to perform the typing was clearly unprofessional and
21 inappropriate and is not condoned by the Board. Appellant had other avenues available to address
22 Ms. Tinker's lack of performance.

23
24 5.6 In light of Appellant's work history at the University and the absence of any former
25 corrective or disciplinary actions against him, a one week suspension is too severe. In this case, a
26 letter of reprimand addressing Appellant's unprofessional response and warning him that any future

1 incidents of similar behavior could lead to formal disciplinary action would have been more
2 appropriate. Therefore, the one-week suspension should be reversed and the appeal should be
3 granted.

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5 **VI. ORDER**

6 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Chandrama Mishra is granted.

7 DATED this _____ day of _____, 2001.
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9
10 WASHINGTON STATE PERSONNEL APPEALS BOARD

11 _____
12 Walter T. Hubbard, Chair

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14 Leana D. Lamb, Member
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